

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY)	MDL NO. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION: 01-CV-12257-PBS
)	Subcategory Docket: 06-CV-11337-PBS
)	
THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
)	
<i>U.S. ex rel. Ven-A-Care of the Florida Keys,</i>)	Magistrate Judge Marianne B. Bowler
<i>Inc. v. Abbott Laboratories, Inc.,</i>)	
No. 07-CV-11618-PBS)	
)	ORAL ARGUMENT REQUESTED

**ABBOTT LABORATORIES INC.'S MOTION *IN LIMINE* TO EXCLUDE CERTAIN
OPINIONS PROFFERED BY PLAINTIFF'S EXPERT MARK G. DUGGAN, PH.D**

Pursuant to Federal Rule of Civil Procedure 7(b), Local Rule 7.1, and Federal Rules of Evidence 104 and 702, Defendant Abbott Laboratories, Inc. ("Abbott") hereby moves to exclude certain opinions proffered by Plaintiffs' expert Mark G. Duggan, Ph.D.

Abbott requests an order ruling inadmissible, pursuant to *Daubert* and its progeny, Duggan's proffered testimony to the extent it relies on a flawed extrapolation methodology.

Abbott files this motion now because exclusion of the challenged aspects of Duggan's opinions provides additional support for certain aspects of Abbott's Motion for Summary Judgment, filed contemporaneously herewith. Other than Dr. Duggan, Plaintiffs have no evidence to prove causation and damages as to the extrapolated claims, requiring summary judgment in Abbott's favor. *See Reference Manual on Scientific Evidence* at 54 (Fed. Judicial Ctr. 2d ed. 2000) ("Summary judgment motions will therefore frequently be combined with Federal Rule of Evidence 104(a) motions in limine."); *Albert v. Warner-Lambert Co.*, 234 F. Supp. 2d 101, 106-07 (D. Mass. 2002) (excluding expert testimony on damages and granting defendant's

motion for summary judgment); *Dunn v. Sandoz Pharm. Corp.*, 275 F. Supp. 2d 672, 684 (M.D.N.C. 2003).

WHEREFORE, Abbott asks that its motion be granted, and relief be provided as requested herein and in the accompanying memorandum.

Dated: August 28, 2009

Respectfully submitted,

/s/ Tara A. Fumerton

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CERTIFICATE OF SERVICE

I, Tara A. Fumerton, an attorney, hereby certify that I caused a true and correct copy of the foregoing ABBOTT LABORATORIES INC.'S MOTION IN LIMINE TO EXCLUDE CERTAIN OPINIONS PROFFERED BY PLAINTIFF'S EXPERT MARK G. DUGGAN PH.D to be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 28th day of August, 2009.

/s/ Tara A. Fumerton
Tara A. Fumerton